

ORDINANCE 2014-6

AN ORDINANCE OF THE MONTGOMERY COUNTY COMMISSIONERS AMENDING RULES FOR PERMITS AND OTHER REGULATION OF RETAIL FOOD ESTABLISHMENTS IN MONTGOMERY COUNTY, INDIANA

WHEREAS, Montgomery County currently requires permits for and regulates retail food establishments in order to provide for the safety and health of the citizens of Montgomery County;

AND WHEREAS, this regulation is provided by the Montgomery County Health Department;

AND WHEREAS, Amber Reed, Director of the Montgomery County Health Department has requested that Chapter 111 of the Montgomery County Code, which provides for this regulation, be amended in order to provide for improved regulation;

AND WHEREAS, the Board of Commissioners finds that Chapter 111 should be amended as requested.

IT IS THEREFORE ORDAINED, that Chapter 111 of the Montgomery County Code is hereby amended to read as follows:

“CHAPTER 111: RETAIL FOOD ESTABLISHMENTS

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§ 111.01 TITLE

This chapter and all ordinances supplemental or amendatory hereto shall be known as the Food Establishments Regulations of Montgomery County, and may be cited as such and will be referred to herein as "this chapter".

§ 111.02 PURPOSE

The purpose of this chapter is to provide minimum standards for the prevention and suppression of disease and health risks associated with the preparation and distribution of food through food service operations within Montgomery County, and to otherwise promote the mission of the food protection program to protect the health of all persons in Montgomery County, Indiana.

§ 111.03 AUTHORITY

The Health Officer of Montgomery County, as hereinafter defined, and the Health Officer's agents and representatives are hereby authorized to issue permits, collect permit and incidental fees, perform inspections, order or otherwise compel correction of violations of this chapter, and are otherwise authorized to perform all actions necessary for the administration and enforcement of this chapter.

§ 111.04 ADOPTION OF REGULATIONS BY REFERENCE

(A) The regulations of the Indiana State Department of Health as found in Title 410 IAC 7-15.5, Title 410 IAC 7-22, Title 410 IAC 7-23, and 410 IAC 7-24, are hereby incorporated by reference in this chapter and shall include any later amendments to those regulations.

(B) Copies of the above referenced regulations are available and on file in the office of the Montgomery County Health Department.

§ 111.05 DEFINITIONS

Unless the context specifically indicates otherwise, the definitions of the current food service requirements of the Indiana State Department of Health and their interpretations shall apply to the enforcement of this chapter. In addition to or to otherwise supplement or to conveniently provide definitions for interpretation, this chapter shall include the following definitions.

111.05.01 BOARD. The Montgomery County Board of Health of Montgomery County, Indiana.

111.05.02 CERTIFIED FOOD HANDLER. As defined in Rule 410 IAC 7-22 means a food handler who holds a certificate recognized by the Conference for Food Protection or an equivalent nationally recognized certification program.

111.05.03 CRITICAL VIOLATIONS. Those violations designated as being critical in 410 IAC 7-24, and as amended hereafter.

111.05.04 COMMUNICABLE DISEASE. Includes those diseases which epidemiological evidence indicates can be transmitted through food preparation or service.

111.05.05 DEPARTMENT. The Montgomery County Health Department of Montgomery County, Indiana, and its employees.

111.05.06 FOOD ESTABLISHMENT. As defined in I.C. 16-18-2-137, any building, room, basement, vehicle of transportation, cellar, or open or enclosed area occupied or used for handling food. This definition also includes a retail food establishment as defined in 410 IAC 7-24; however, it does not include a bed and breakfast establishment.

111.05.07 FOOD PROCESSING ESTABLISHMENT. Any commercial establishment in which food is processed or otherwise prepared, packaged or manufactured for human consumption.

111.05.08 HEALTH OFFICER. The Health Officer of the Montgomery County Health Department, and his or her authorized representatives.

111.05.09 MICRO MARKET. An unstaffed self-checkout retail food establishment not accessible by the general public; with displays that do not exceed 75 linear feet which contain an automated payment kiosk, located within a business and only accessed by customers of business, employees, or escorted guests known to business.

111.05.10 MICRO MARKET DISPLAY. An open rack; refrigerator; freezer; vending machine; or beverage dispenser for use of food display

111.05.11 MOBILE FOOD MARKET ESTABLISHMENT. Any food establishment without a fixed location capable of being readily moved intact from location to location where food, intended for human consumption outside of the facility, is stored, sold or offered in prepackaged form, fresh or frozen.

111.05.12 MOBILE FOOD SERVICE ESTABLISHMENT. Any food establishment without a fixed location capable of being readily moved intact from location to location where food, intended for human consumption outside the facility is stored, sold or offered in open form, fresh or frozen.

111.05.13 NEW PERMITTEE. Shall be deemed to be any person, other than an immediate family member, who acquires, through an asset purchase agreement, stock purchase agreement, merger, consolidation, gift or other similar method, more than 50% of the control of a prior permittee's business.

111.05.14 NON-CRITICAL VIOLATIONS. Violations designated as being non-critical in 410 IAC 7-24, and as amended hereafter.

111.05.15 OPERATE (and its derivatives). One that operates a business or operates as a business.

111.05.16 PERMIT. A certificate or a permit number of a size and style previously approved by the Health Officer.

111.05.17 PERMITTEE. Includes the person who is the owner of or responsible for the operation of a food establishment, including a food establishment's authorized representative, and who shall be responsible for the acceptance of all notices at the address listed on the application for any permit issued hereunder.

111.05.18 PERSON. Includes, but not limited to, an individual, corporation, firm, partnership, proprietorship, association, business organization, municipality or any other group acting as a unit, as well as an individual, trust or estate, or the agent or legal representative thereof.

111.05.19 PERSON IN CHARGE. Means, as defined in 410 IAC 7-24-60, the individual present at a retail food establishment who is responsible for the operation at the time of inspection.

111.05.20 RETAIL FOOD MARKET ESTABLISHMENT. Any food establishment, including, but not limited to, a grocery, meat market, poultry market, fish market, egg market, delicatessen, confectionery, candy kitchen, nut store, retail bakery store, or any food establishment, whether fixed or movable, where food, intended for human consumption off the premises, is manufactured, produced, stored, prepared, handled, transported, sold or offered with or without charge. Provided, however, that the provisions of this chapter shall not include meat or poultry slaughterhouses.

111.05.21 SAFE HOLDING TEMPERATURE. As indicated in 410 IAC 7-24, as it may be hereafter amended, and as applied to potentially hazardous foods shall mean food temperatures at 41° Fahrenheit or below, and 135° Fahrenheit or above, and frozen foods at 0° Fahrenheit or below; provided, however, a tolerance of 5° Fahrenheit shall be permitted on frozen foods only.

111.05.22 TEMPORARY FOOD SERVICE ESTABLISHMENT. Any food establishment in any enclosure, stall or other facility, whether fixed or mobile, operating at one site or location for a period of time not in excess of 14 consecutive days, in conjunction with a single event or celebration, where food in open form intended for human consumption on or off the premises is offered with or without charge.

111.05.23 UTENSIL. Any implement used in the storage, preparation, service, consumption, display, transportation, or cleaning of food or drink products.

111.05.24 VENDING MACHINE. Means the same as the same term defined in 410 IAC 7-24-102; and a self-service device that, upon activation, through insertion of coin, paper currency, token card, key, or by manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

PERMITS

§ 111.06 PERMIT REQUIREMENTS

It shall be unlawful for any person to sell or give away any food or to operate a food establishment or to act, whether actually or ostensibly, as a food establishment operator within Montgomery County, Indiana, without possessing a valid permit for each such operation from the Health Officer, unless otherwise exempted from the provisions of this chapter.

Penalty, see § 111.99

§ 111.07 POSTING

All permits shall be posted in a conspicuous place in view of the public in each food establishment. With respect to mobile food service establishments, the name, address and telephone number of the permittee shall be conspicuously displayed on each licensed mobile unit not less than two inches in height. In addition, a copy of the permit must be located in each mobile unit at all times for purposes of identification.

Penalty, see § 111.99

§ 111.08 SEPARATE PERMITS

(A) Separate permits will be required for each food establishment or vending operator regardless of whether or not they are contained in the same building when:

- (1) The management or ownership is separate at the same location; or
- (2) The food establishment is operated by the same management, but as or at separate locations.

(B) Separate permits will not be required for a food establishment that serves alcoholic beverages and is operated under a lease management agreement or similar agreement in which the operator of the food establishment is not the same as the holder of the alcohol license issued by the State of Indiana.

Penalty, see § 111.99

§ 111.09 APPLICATION FOR PERMIT

(A) The application for a permit shall be made to the Health Officer on forms provided by the Health Officer. Such forms shall show, among other information which may be required by the Health Officer, the legal name, address, and telephone number of the permittee, the name under which said permittee intends to operate, 24 hour emergency contact information, the address of the establishment, and the number of food establishment personnel employed at the establishment (which shall include the permittee's manager, or other supervisory personnel). Said application shall include the signature of the permittee or an authorized representative of the permittee.

(B) Applications for the following list of establishments require additional information:

(1) *Micro Market*. The number of Micro Markets intended to be operated, the locations maintained by the permittee where supplies are kept or where displays are repaired or renovated, and the type and form of the food or beverages to be dispensed from the Micro Market Displays.

(2) *Temporary food service*. The location of any commissary or commissaries and where any supplies will be kept.

§ 111.10 PERMIT DENIAL

If an application for a permit is denied, the denial shall be in writing and include the specific reasons, with citations to any applicable statute, regulation, or other authority for the denial. In addition, the applicant's right of appeal shall be noted with reference to the section of this chapter providing for appeals.

§ 111.11 PERMIT ISSUANCE

A permit shall be issued subsequent to application and upon a determination by the Health Officer that the permittee has complied with all of the applicable provisions of this chapter, the permittee has tendered the appropriate fee as hereinafter specified, and after approval by any other applicable regulatory agency or department, including but not limited to the Building Commissioner, City Engineer, and Fire Department and compliance with any other state or local ordinance, statute, or regulation.

§ 111.12 TERM

(A) (1) The permit for a retail food service establishment, retail food market establishment, mobile food service establishment, mobile food market establishment, bed and breakfast, commissary, or food processing establishment shall be for a term of one year beginning upon the 1st day of January each year.

(2) Said permits shall be renewed annually on or before the last day of December; however, if the day of expiration of the permit falls on a weekend or government-recognized holiday, the permittee will be given until the following business day to renew the permit without late fees being assessed. Permits applied for mid-year will qualify for a proration of fees.

(B) The permit for a temporary food service establishment shall be for a term not to exceed 14 consecutive days.

(C) Any permit for a farmers market shall be for a term of up to one year running from March 1 the year of issue to February 28 the year after issue.

§ 111.13 PERMIT NOT TRANSFERABLE

No permit issued to any permittee under this chapter shall be transferable between locations or between operators.

CONSTRUCTION, RENOVATION, AND ALTERATION OF FOOD ESTABLISHMENTS

§ 111.14 CONSTRUCTION

All food establishments which are hereinafter constructed or renovated shall conform in their construction to the applicable requirements of 410 IAC 7-24, as amended, as well as with this chapter and all applicable building, zoning and fire codes.

Penalty, see § 111.99

§ 111.15 PLANS

No construction, renovation, or alteration for any food establishment shall begin without the construction, renovation, or alteration plans being first submitted to and approved by the Health Officer. Applications, including any specificity required for particular materials required by any regulatory agency, must be filled out in full or the application may be denied.

Penalty, see § 111.99

§ 111.16 EQUIPMENT

All equipment installed in a food establishment for use in the cleansing and bactericidal treatment of utensils, or in the preparation, storing, handling, cleaning, sanitizing, serving, or displaying of any food or beverage products, shall be of a type conforming with all applicable requirements with regard to proper holding temperatures, design, construction, location, and materials.

Penalty, see § 111.99

§ 111.17 PROHIBITED EQUIPMENT

The Health Officer may prohibit the further use of any equipment that fails to meet the requirements of this chapter or any other rule, regulation, or statute that applies to the purposes of this chapter.

Penalty, see § 111.99

§ 111.18 COMPLIANCE

All individuals and entities regulated by this chapter must fully comply at all times with all local and state building, zoning, and fire codes as a condition of any permit. Failure of any permittee to fully comply with any applicable building, zoning, and fire code shall be the basis for the suspension, immediate closure or revocation or nonrenewal of any permit issued hereunder.

Penalty, see § 111.99

§ 111.19 GREASE TRAP

Unless exempted by that agency or authority having jurisdiction, all food establishments shall be required to install a grease interceptor in the waste line leading from sinks, drains and other fixtures or equipment where grease may be introduced into the drainage or sewage systems in quantities that can affect line stoppage or hinder sewage treatment. The grease interceptor must be installed in such a manner that meets all applicable requirements of any applicable Building Department and shall be located in such areas as are easily accessible for cleaning.

Penalty, see § 111.99

APPLICATION AND PERMIT FEES

§ 111.20 FEES

Prior to the issuance or renewal of any permit, each permittee shall first tender to the Montgomery County Health Department an application fee and a permit fee for each such operation in accordance with the classification as established in the following schedule of fees.

§ 111.21 PLAN REVIEW FEES

(A) Each new food establishment or bed and breakfast or any existing food establishment or bed and breakfast desiring to remodel or build any additions requiring a building or other permit which includes renovations to the food preparation area shall be required to pay an initial fee for the review of plans and specifications and for the initial inspection of the food establishment bed and breakfast. This fee is in addition to the permit fee. In the instance where there are multiple food establishments or areas within one building which will require staged final inspections at separate times, an application fee as set out below will be required for each final inspection.

PLAN REVIEW FEE

\$150.00

(B) *Additional inspections or review.* In those circumstances where building or remodeling of a food establishment results in more than three inspections of the food establishment's premises or continuing review of or consultations regarding the plans thereof by the Health Officer, and which inspections or

review or consultations are necessitated due to failure to have the plans completed or finalized at the time of application for a permit or the failure to implement construction or remodeling consistent with the original plans, or any other cause within the control of the food establishment which results in continuing and extra review of or consultation regarding the plans for the food establishment, there shall be an additional fee of \$100.00 payable prior to opening the food establishment.

§ 111.22 FEES FOR RENEWAL

Upon renewal or transfer (not requiring plan review) of permits, the following fees will apply:

PERMIT FEES - RETAIL FOOD MARKET ESTABLISHMENT

(a) Up to 10,000 square feet:	\$100.00
(b) 10,001 to 35,000 square feet:	\$150.00
(c) 35,001 to 60,000 square feet:	\$200.00
(d) 60,001 square feet and over:	\$300.00

PERMIT FEES - RETAIL FOOD SERVICE ESTABLISHMENT

(a) 1 through 10 employees:	\$100.00
(b) 11 through 40 employees:	\$150.00
(c) 41 and more employees:	\$225.00

REGISTRATION FEE - FARMERS MARKET

(a) Home Based Vendor	\$5.00
(b) Not-For-Profits	NO FEE - REGISTRATION ONLY

PERMIT FEES – MICRO MARKET

(a) 1 to 20 food or beverage displays	\$100.00
(b) 21 to 50 machines	\$150.00
(c) 51 or more machines	\$175.00

PERMIT FEES - TEMPORARY FOOD SERVICE OR FOOD MARKET ESTABLISHMENT

(a) 3 days or less of operation	\$20.00
(1) Each additional day	\$5.00
(b) 3 Month	\$30.00
(c) 6 Month	\$60.00
(d) 9 Month	\$90.00

PERMIT FEES – BED AND BREAKFAST – *no plan review fee required*

(a) One year	\$100.00
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MISCELLANEOUS FEES

(1) Permit replacement fee	\$10.00
(2) Processing fee (in addition to permit fee) applicable to any new permit or transfer	\$25.00

§ 111.23 PERMIT REVOKED

A food service establishment permit shall be revoked if false information is given on the application or the application is not properly or accurately completed.

§ 111.24 NO PERMIT OR LATE RENEWAL

Should any permittee fail to obtain the permit prior to the opening of the food establishment for business, or should any permittee fail to renew a permit as required by this chapter, then said annual fee shall be 125% of the annual fee set forth above for that particular food establishment. Nothing in this section shall prevent the Health Officer from exercising any other rights or duties regarding suspension, closure, or revocation of the permit with regard to any food establishment.

§ 111.25 EXEMPTIONS

(A) The permit fee provisions of this chapter shall not apply to any fruit and vegetable stands maintained and operated by a person who sells directly to a consumer fresh fruits, vegetables, honey or cider; provided that, nothing herein shall be construed to limit the Health Officer's authority to inspect any such stands in order to insure public health.

(B) Food establishments which comply with the terms and provisions of I.C.16-42-5-4 (as may be recodified and remaining applicable to exempt organizations), shall upon proof of exemption be exempt from the provisions of this chapter unless they waive said exemption. Exempt organizations such as sports leagues, church-sponsored soup kitchens, churches, and temporary senior citizen feeding sites are exempt from the permit provisions of this chapter.

(C) Food establishments which sell or offer for sale directly to the consumer only prepackaged confections such as candy, chewing gum, nut meats, potato chips, pretzels, popcorn, coffee, juice, and soft drink beverages shall be exempt from the provisions of this chapter.

(D) Vending machines which dispense non-potentially hazardous food or drink products in prepackaged or pre-bottled form, shall be exempt from the provisions of this chapter

§ 111.26 WITHHOLDING PERMIT DUE TO DELINQUENT PERSONAL PROPERTY TAX

Prior to issuing any new or renewal permit, the applicant or permittee shall be required to obtain from the Montgomery County Treasurer a certificate of clearance verifying that the applicant or permittee is not delinquent in the payment of any personal property taxes. If applicant or permittee does not obtain such certificate of compliance, the Montgomery County Health Department shall withhold issuance of a new or renewal permit until any delinquent personal property taxes owed by the applicant or permittee are paid in full, including penalties.

(Ord. 2003-1, passed 1-28-03; Am. Commissioners Ord. 2008-1, passed 2-11-08; Am. Commissioners Ord. 2008-8, passed 6-23-08).

§ 111.27 MINIMUM STANDARDS INSUFFICIENT

The provisions of this chapter are intended to provide standards for licensing for and inspection of food establishments. Nothing contained in this chapter shall be construed to require the Health Officer to issue or prevent the revocation of a permit if, after investigation by the Health Officer, the Health Officer concludes that issuance or continuation of a permit results in unacceptable health risks resulting from the size or configuration of the food establishment, change of use or type of food being served compared with existing facilities for the food establishment, and the likelihood that efforts to ameliorate increased health risks resulting therefrom will be unsuccessful. Any decision by the Health Officer to refuse to issue a permit or to revoke a permit for reasons found in this section shall entitle an aggrieved food establishment to a public hearing as provided in this chapter and a right to appeal as provided herein or by law.

MINIMUM SANITARY REQUIREMENTS

§ 111.28 SANITARY REQUIREMENTS

All food establishments, retail food markets, farmers markets, bed and breakfasts, vending operators, and food and beverage vending machines shall comply with at least the minimum sanitary requirements specified by the Indiana State Department of Health as provided in 410 IAC 7-24 and 410 IAC 7-22, and as those regulations may be amended or superseded hereafter.

Penalty, see § 111.99

EDUCATION

§ 111.29 FOOD SAFETY

(A) Every person who is employed, or is about to be employed in a food establishment, shall be familiar with the requirements of 410 IAC 7-24. A copy of 410 IAC 7-24 shall be kept on the premises at all times. All food establishment personnel employed by a food establishment may be required to attend a food safety education program for any of the following reasons:

(1) If the establishment is subjected to immediate closure by the Health Officer and the education program is deemed necessary by the Health Officer.

(2) If the Health Officer determines the necessity of a food safety education program as a result of a hearing dealing with violations of this chapter.

(3) If upon inspection it is determined that remedial efforts have not been made to correct prior violations of this chapter.

INSPECTIONS

§ 111.30 FREQUENCY OF INSPECTION

Each food establishment for which a permit is required under the provisions of this chapter shall, and any other individual or entity which delivers or transfers food, may be inspected as frequently as deemed appropriate by the Health Officer.

§ 111.31 AUTHORITY TO INSPECT AND COPY RECORDS

The provisions of I.C. 16-20-8-1 *et. seq.* or any amendment thereof shall apply to inspections and access to records of inspections.

VIOLATIONS

§ 111.32 PROCEDURES WHEN VIOLATIONS ARE NOTED

(A) At the time of an inspection any violation(s) discovered by the Health Officer shall be recorded on an inspection report that is equivalent to the Indiana State Department of Health inspection report.

(B) A copy of the inspection report stating any violation(s) and their corrective dates shall be given to the person-in-charge of the establishment, or the report shall be delivered by mail to the address of the establishment listed on the permit application, as required under I.C. 16-20-8-5.

(C) The Health Officer, or the Health Officer's authorized representative, shall have the final approval on all food establishment inspection reports and related documents; and shall reserve the right to make changes as deemed necessary in accordance with I.C. 16-20-8-5.

§ 111.33 EXAMINATION AND CONDEMNATION OF FOOD

The Health Officer may, along with any other enforcement agency (if applicable), upon written notice to the owner or person in charge, place a hold order on any food if that food is in violation of any state laws. A written order must specify the reason for the hold order. The Health Officer or their authorized agent shall tag, label, or otherwise identify any food subject to the order and follow applicable statutes or regulations concerning disposal or future use or disposition of the food.

§ 111.34 EMERGENCY CLOSURE

(A) The Health Officer shall issue emergency closure for a retail food establishment, bed and breakfast, micro market, and farmers market for any of the following reasons:

(1) Failure to possess a valid food permit required by this chapter.

(2) The presence of any condition that poses an imminent health hazard or substantial harm to the public health and safety.

(B) *Procedure.* Any closure order will be in writing. The order shall identify the food establishment, describe the specified grounds upon which closure is based, direct the immediate closure of the establishment and vacating of the premises by consumers, list the corrective actions necessary to re-open the food establishment, and state that a hearing on the emergency closure may be requested by the owner or operator. The order shall be served in person on the owner, or person in charge of the establishment.

§ 111.35 TEMPORARY FOOD SERVICE ESTABLISHMENT PERMIT SUSPENSION/ CLOSURE

(A) The Health Officer may suspend a permit for a temporary food establishment for any of the following reasons without prior notice or hearing:

(1) The operation of the temporary food establishment is deemed an imminent health hazard by the Health Department due to certain conditions, including but not limited to Title IAC 410 7-24 or this chapter.

(2) Interference with the Health Officer to perform their duties, including denial of access to the premises.

(B) When a permit is suspended the temporary food service establishment shall cease operation immediately. The suspension shall become effective upon service of a written notice to the permit holder or person in charge of the establishment.

(C) The Health Department may end the suspension at any time with or without a hearing if it is determined that the reason of the suspension no longer exists.

§ 111.36 PERMIT REVOCATION

(A) The Health Officer, after providing an opportunity for a hearing shall permanently revoke a retail food establishment, bed and breakfast establishment, vending machine/ micro market operation, or farmers market establishment permit for serious or repeat violation(s) of any of the requirements of Title IAC 410 7-24 or this chapter; or, interference with the Health Officer or the Health Officer's agent(s) in the performance of their duties.

(B) Prior to such action, the Health Officer shall notify the permittee in writing stating the reasons for the permit revocation and advising that the permit shall be permanently revoked after no less than ten days following service of such notice; unless a written request for a hearing is filed with the Health Department by the permittee prior to the date upon which the permit revocation is to become effective. The permit may be suspended for cause pending its revocation or a hearing.

(C) If no request for a hearing is filed prior to the date the permit revocation is to become effective, revocation of the permit becomes final.

§ 111.37 HEARING

(A) All hearings required under this or any other section shall be open to the public and held with sufficient written notice to the permittee of time, place, and nature thereof to enable the permittee to appear and

participate in the hearing. The notice of hearing shall be served upon the permittee by leaving or mailing by certified mail the notice to the address listed on the permit application as the permittee's mailing address or such other address as the permittee shall designate in writing to the Health Officer.

(B) At any hearing required under this chapter, the Hearing Officer shall be the Health Officer or the Health Officer's designee. Every person who is a party to such proceedings shall have the right to submit evidence, to cross-examine witnesses and to be represented by legal counsel. All such hearings shall be conducted in an informal manner, but irrelevant, immaterial or unduly repetitive evidence may be excluded.

(C) Upon the conclusion of such hearing, the Health Officer shall enter a final order, subject to the right of appeal to a court having jurisdiction of the parties and of the subject matter of the appeal.

ENFORCEMENT

§ 111.38 ENFORCEMENT

It shall be the duty of the Health Officer to enforce the provisions of this chapter. Any permit issued in conflict with the provisions of this chapter shall be null and void. A violation of an order issued by the Health Officer shall be considered to be a violation of this chapter and of Indiana law, when applicable.

§ 111.39 VIOLATIONS

Whenever the Health Officer determines that any entity subject to the provisions of this chapter, is in willful violation of any of the provisions of this chapter, in addition to any other remedy or penalty imposed by this chapter, the Health Officer shall furnish evidence of said willful violation to the Prosecuting Attorney of Montgomery County, Indiana or the attorney for the Board who shall seek all appropriate legal remedies against the person(s) violating the provisions of this chapter.

§ 111.40 INJUNCTION

The Health Officer may bring an action for an injunction in the Circuit or any Superior Court of Montgomery County, Indiana, to restrain any person from violating the provisions of this chapter, to cause such violation(s) to be prevented, abated or removed, or to otherwise enforce this chapter.

§ 111.41 EXPENSE

Any person violating any of the provisions of this chapter shall be liable to the Health Department for the expense, loss or damage occasioned by reason of such violation, including reasonable attorney's fees and costs.

§ 111.42 CUMULATIVE

The remedies provided in this subchapter shall be cumulative, and not exclusive, and shall be in addition to any other remedy provided by law.

§ 111.43 REQUEST FOR NOTICE

Any entity, which is not a Retail Food Establishment, intending to host an event in Montgomery County which involves providing food to the public for the purpose of fundraising, customer appreciation, grand openings, community dinners, may request a courtesy public service consultation by requesting such a consultation from the Health Department.

§ 111.99 PENALTY

The provisions of Title 410 IAC 7-23 provides local health departments with authority to assess civil penalties (fines) for violators of laws intended to suppress disease and health risks associated with preparation and distribution of food. For purposes of tracking critical item violations and imposing fines under this chapter the Department shall maintain inspection records for not less than one year from the date of any inspection conducted after the effective date of this chapter. No fine is payable the first time a "critical item" violation is noted within any one year period after the effective date of this chapter. For a second or subsequent "critical item" violation of this chapter after its effective date, or within one year of the date of an inspection conducted after the effective date of this chapter, a civil penalty is payable as provided in this chapter.

(A) The following civil penalties (fine) shall apply for a "critical item" violation which reoccurs for a second or subsequent time within any one year period after the effective date of this chapter, regardless if that "critical item" can be corrected immediately:

(1) The second time the same "critical item" violation is determined within any one year period, there will be a fine of \$50.

(2) The third time the same "critical item" violation is determined within any one year period there will be a fine of \$100.

(3) If the same "critical item" reappears as a violation for a fourth (or more) time within any one year period, there will be a fine of \$200.

(B) Each day after the expiration of the time limit for abating any violation of this chapter or completing other actions as ordered by the Health Department or the Health Officer of the county, shall constitute a distinct and separate offense.

(C) All fines shall be payable in full within 30 days of assessment, unless otherwise ordered by the Hearing Officer. Failure to pay fines by the due date will result in an additional 10% late fee. No permit is to be issued or renewed until all fines have been paid in full. Any fines and late fees may be collected in any manner provided herein or as provided by law including any law for collection of debts, along with attorney fees incurred to collect said amounts owing and with all costs of collection.

(D) Any assessment of a civil penalty by this chapter is subject to the right of appeal and a public hearing which will be scheduled, conducted, and concluded as provided in §111.36 of this chapter. Any request for an appeal shall be filed in writing with the Health Officer within ten days of assessment of the civil penalty."

IT IS FURTHER ORDAINED that all ordinances or parts of ordinances in conflict herewith are hereby repealed.

IT IS FURTHER ORDAINED that the invalidity of any section, clause, sentence or provision of this Ordinance shall not affect the validity of any other part of this Ordinance.

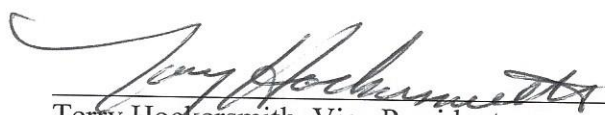
IT IS FURTHER ORDAINED that if any term or provision of this Ordinance shall be found to be wholly or partially unenforceable then, notwithstanding same, the remainder of this Ordinance shall remain in full force and effect and such term or provision shall be deemed stricken or modified to the extent required to make the remainder of this Ordinance enforceable.

IT IS FURTHER ORDAINED that this ordinance will be effective January 1, 2015.

Adopted this 22 day of December, 2014.

A MAJORITY OF THE BOARD OF
COMMISSIONERS OF MONTGOMERY COUNTY


Phil Bane, President


Terry Hookersmith, Vice President


James D. Fulwider, Member

Attest:


Michelle Cash, Auditor